

7-16  
June 17, 1950

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ARIZONA ATTORNEY GENERAL

Mr. Wes Polley  
County Attorney  
Cochise County  
Bisbee, Arizona

Dear Mr. Polley:

Pursuant to our telephone conversation the day before yesterday and in respect to your letter of June 8, herewith is our opinion on the question which you asked.

In your letter you state that the St. David Irrigation District has adopted the alternative method of electing district officers, that is the acreage system, in lieu of the single vote or individual taxpayer election system. You further state that the district is deciding whether to apply for a loan from the United States Government and that an election is to be held on this question later on this month. Then you ask the following question:

"Shall the acreage system of voting be followed or shall the taxpayer system, as defined in Section 75-1108 be followed in the special election to approve or disapprove the proposed contract with the Government."

As we mentioned in our telephone conversation, it is our opinion that the individual taxpayer system of election must be followed in this matter. Section 75-1108 provides in part as follows:

"That notwithstanding the provisions of any general, special or local law, before any such contract or agreement shall become effective and binding upon the district, such contract or agreement shall be submitted to and approved by the vote of a majority of the real property taxpayers voting on

the question of approving or disapproving such contract or agreement. Such taxpayers shall also in all respects be qualified electors of this state, and of the district affected by such question. \* \* \*"  
(Emphasis supplied)

You will notice that this section and the other sections contained in Art. 11 of this chapter were enacted in 1934 and the legislature undoubtedly enacted these statutes and declared an emergency for the purpose of taking the financial benefits conferred by virtue of the creation of federal agencies such as the R.F.C.

This article is rather complete in itself and clearly provides for a general manner of conducting an election to disaffirm or ratify contracts or agreements made by virtue of this article. The other section which you inquire about, 75-216, was enacted in 1921 and provides for the manner of conducting elections in minute detail. This section also authorizes the "acreage system" in lieu of the "personal and individual system".

It is possible that proceedings might be had under Section 75-442, inasmuch as the section relates to proposals to enter into contracts with the government and we believe that it was because these two sections existed that the legislature inserted the words "notwithstanding the provisions of any general, special or local law" in 75-1108.

This section, 75-1108, above quoted, clearly states that the contract or agreement shall be submitted to a vote of the majority of the real property taxpayers and unless we can find therein some provision which clearly limits or alters this, we believe that the individual system must be followed.

Our examination of the other sections in this article discloses nothing which would authorize any method except the personal or individual system; however, in Section 75-1108, the following words are used:

"Any such special election shall be conducted and canvassed in all respects as nearly as practicable in conformity with the provisions of law covering the election of the governing body of the district. \* \* \*"  
(Emphasis supplied)

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It is readily conceivable that if the acreage system of election were used the contract or agreement could easily be ratified and a majority of the taxpayers could actually be against the same or vice versa. This would obviously defeat the meaning of the first part of this section relating to a majority vote, and inasmuch as we are required to lend effect, if possible, to all of the provisions of the statute, (Ariz. Eastern Ry Co. v. Matthews, 20 Ariz. 282, 180 Pac. 159; Street v. Comm. Credit Co. 35 Ariz. 479, 281 Pac. 46) we feel that the last quoted part of this section does not relate to qualification of voters or to the number of votes which each taxpayer has, but relates rather to the actual physical manner of conducting the election by referring to Section 75-216. The words used tend to indicate this fact and it appears very lucidly when we look at the provisions of 75-216. Certainly, election officials would not have to resort to other laws to conduct an election of this nature since this section provides extensively and elaborately for the method of conducting and canvassing the election, even to directing the inspector to have a string upon which to file the ballot stubs.

Section 75-442 appears to be superseded by 75-1108 and even if it is not, we believe that it might deal only with contracts for repayment rather than contracts for original financing.

For the foregoing reasons, it is our opinion that the "personal and individual system" of election should be used rather than the "acreage system".

We trust that this will serve to answer your inquiry.

With kindest regards, we remain

Very truly yours,

FRED O. WILSON  
Attorney General

CALVIN H. UDALL  
Assistant Attorney General

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